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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,516	01/15/2004	William Orman Wollgast	03006	5804
39047	7590	05/29/2007		
MACHETTA LAW FIRM, P.C 14614 FALLING CREEK DRIVE HOUSTON, TX 77068			EXAMINER BEACH, THOMAS A	
			ART UNIT 3671	PAPER NUMBER
			MAIL DATE 05/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/758,516

Applicant(s)

WOLLGAST ET AL.

Examiner

Thomas A. Beach

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 02/23/07.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 23 February 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 1, 4, 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pullman 5,909,961 in view of Nollin et al 5,477,627.

Pullman discloses a digging attachment and method of constructing that attachment (16) for securement to a work-type vehicle having a connecting frame (24) with extensions (22A) located directly below said connecting frame and slanting away from said connecting frame allowing for the connection to a work type vehicle; a base (16), shaped like a rectangular box, with five sides and an open end, including a top side (26/27), a bottom side, a left side (19), a right side (18) and a back side (16); said top side, right side, left side and bottom side having a top edge, right edge, left edge and bottom edge respectively; the said open side has edges (60) that are shaped to cut through the surface; the back side of said base (16) connected perpendicular to said connecting frame (14) and near the bottom so that the base is directed just above the extensions and along the opposite side of the extensions providing support when the work-type vehicle is attached. Pullman does not show said top side having a top cutout; said back side having a back cutout. However, Nollin show a similar digging attachment for securement to a work-type vehicle having a connecting frame with extensions with a base and shaped like a rectangular box, with a top side having a top cutouts (52); said back side having a back cutout (52; in figure 3). Therefore, it would have been obvious

to one of ordinary skill in the art at the time the invention was made to modify Pullman, as taught by Nollin, to include drainage and proper cutting of soil material.

2. Claims 2, 3, 6, 7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pullman 5,909,961 and Nollin et al 5,477,627 alone.

As concerns claims, it would have been an obvious matter of design choice to modify Pullman to include the range of as 15 to 30 inches wide by 15 to 30 inches high by 15 to 30 inches deep (claim 2), or 24 inches wide by 28 inches high by 28 inches deep (claim 3) since applicant has not disclosed that these ranges solve any particular problem or purpose and it appears other similar ranges would work equally well. Furthermore, routine experimentation would lead one of ordinary skill in the art to these ranges.

Response to Amendment

3. The affidavit/declaration filed on 02/23/07 under 37 CFR 1.131 has been considered but is ineffective to overcome the Pullman 5,909,961 reference.

The Pullman 5,909,961 reference is a statutory bar under 35 U.S.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CFR 1.131.

Response to Arguments

4. Applicant's arguments with respect to claims filed 02/23/07 have been considered but they are not persuasive.

The newly amended apparatus claims do not have any language regarding a skimmer box for use with a swimming pool. Furthermore, that kind of language amount to intended use if it were within the claim since applicant is not claiming the combination of a swimming pool and apparatus to make it. However, in response to applicant's arguments that a skimmer box for use with a pool (if claimed) is not shown, this recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Therefore, these arguments are not persuasive.

Applicant's arguments do not require a flat bottom as amended to be like a rectangular box. Applicant claim language does not preclude the interpretation of cutouts as identified above in the rejection. All edges are considered to be shaped in a way that is capable of cutting dirt as shown.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is 571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Thomas A. Beach

May 18, 2007

THOMAS A. BEACH
Primary Examiner
Group 3600